

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-248-W - ORDER NO. 97-52
JANUARY 17, 1997

IN RE: Robert B. Rhyne,)	ORDER
)	DENYING
Complaint,)	REHEARING
)	AND/OR
vs.)	RECONSIDERATION
)	
Carolina Water Service, Inc.,)	
)	
Respondent.)	
)	
)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition for Rehearing and/or Reconsideration of Commission Order No. 96-804 ("the Order") dated November 20, 1996, in the above referenced matter, as filed by Carolina Water Service, Inc. ("CWS" or "the Company"). The Petition was timely filed by CWS.

The Petition requests that this Commission provide for a rehearing of this matter or reissuance of an Order to require the Complainant, Robert B. Rhyne ("Rhyne" or "Developer") to incur the costs of the main extension from the Company's existing system to the Developer's York County property ("Property") and to authorize the Company to waive collection of the tap fees that would otherwise be collected from the development of the water system on Rhyne's Property. We deny the Company's request.

We note for clarity that Rhyne is the owner of 187 acres of property in York County, South Carolina. This Property is located approximately 1.8 miles from the nearest CWS main in the Company's Commission approved service area. CWS has a franchise with York County to serve the area in which the Property is located. Rhyne plans to develop the Property into single family homes and therefore needs water and wastewater service for the development. Originally, Rhyne sought Commission permission to install a well system on the Property to serve the development. However, in Order No. 96-804, we denied Mr. Rhyne's request and further ordered CWS to run a ten inch line from the CWS main to the Property.

DISCUSSION

CWS first contends that the Order is unsupported by the evidence of record. CWS states that the Commission reached a result which neither party proposed, and, consequently, there is no evidence of record upon which the Commission could have relied upon as justification for its decision. We disagree.

This Commission is vested with "the power and jurisdiction to supervise and regulate the . . . service of every public utility in this State and to fix just and reasonable standards, . . . [and] practices . . . of service to be furnished, imposed, or observed, and followed by every public utility in this State." S.C. Code Ann. § 58-3-140 (1995). CWS is a public utility under the jurisdiction of the Commission. The Commission, in its regulation of public utilities, has the discretion to reach conclusions based upon its evaluation of evidence received and may formulate remedies

and render appropriate decisions based upon the evidence. "The Commission sits as the trier of facts, akin to a jury of experts." Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 284, 422 S.E.2d 110, 113. We are not bound to accept only the remedies suggested by the Parties of Record in this matter.

We feel that substantial evidence of record in this matter supports our conclusion. "Substantial evidence" has been defined by the South Carolina Supreme Court to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hamm v. S.C. Public Service Commission, 309 S.C. 295, 299, 422 S.E.2d 118, 120 (1992). We noted in Order No. 96-804 that Rhyne testified at hearing that he would be unable financially to run a 1.8 mile extension of a ten inch water main to CWS's existing main because it was not "economically feasible." Rhyne stated that the approximate costs of providing service per lot, including all tap fees, would be 25 - 30% of the lot price. As noted in Rhyne's testimony, incurring such a cost would render development of the property so prohibitive as to virtually prevent development.

We did not order Rhyne to extend the main 1.8 miles at his own expense because, as a matter of policy, we felt that the Company should run the line. The Company may fully recover its costs through the collection of tap fees from new residents of the development. There is no evidence of record which demonstrates that it is "economically unfeasible" for CWS to run the main. We note that CWS will benefit from serving the new customers of

Rhyne's development and will further benefit from other new customers that may connect to the new 1.8 mile main.

CWS's second contention is that the Order is inconsistent with the Company's approved tariff filed with this Commission. The Commission itself approved the tariff in 1994. Under the particular facts and circumstances of this case, we have exempted Rhyne from the tariff provision quoted by the Company in its Petition. Requiring Rhyne to run the 1.8 mile main through other persons' lands and incur such an expense is, we feel, unjust in this instance. Since we have ultimate authority over the Company's tariffs, this Commission may, in its discretion, render decisions in light of tariffs and in light of other substantial evidence on a case by case basis.

The Company sought and received the authority from this Commission to serve this large service area. Rhyne has no other choice of water company. As we quoted above, this Commission is empowered by statute to regulate CWS's service in this area. Regardless of this portion of the tariff, we are requiring the Company to serve this new customer in the manner we feel most appropriate under the facts and circumstances in this case.

In its last argument, the Company states that our decision violates "good regulatory policy." In support of its position, the Company cites potential economic risks as a concern in this matter. In fact, we feel that the Company is the party best suited to install this line. The Company has adequate resources to run the line, is in the business of installing such lines, may recover its

costs from future tap fees in the Rhyne development, and further will benefit from other future customers that it may serve from this line. We feel, based on Rhyne's testimony and the growth in this area of South Carolina, that the investment in this portion of the Company's service area is not so speculative.

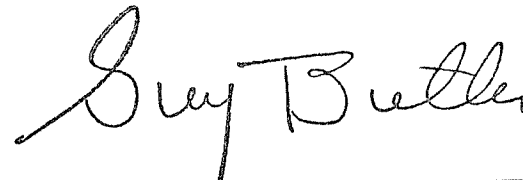
Additionally, our decision to deny Rhyne's request for a well system is supported by the testimony of CWS witness Carl Daniel. Mr. Daniel stated in prefiled testimony that "future homeowners will benefit greatly by receiving a [sic] higher quality water and fire protection with lower cost home owner insurance premiums, all unavailable in a community water system. We believe [the Development] should be included as part of the County regional water system for the ultimate benefit of the residents and the public good." The courts have noted that the Commission's police power to protect the public good or public welfare is superior to the power to contract. Anchor Point, Inc. v. Shoals Sewer Company, 308 S.C. 422, 418 S.E.2d 546 (1992). Therefore, we have ruled in favor of the public welfare in this instance over considerations of the "power of contract" between the customer, Rhyne, and the Company via the Company's tariff. We feel that our decision is good regulatory policy in that it ensures that residents of this area are guaranteed service from a regional water system.

Because of the reasoning stated above, the Commission denies rehearing or reconsideration of this matter.

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This Order shall remain in full force and effect until further
Order of the Commission.

BY ORDER OF THE COMMISSION.


Chairman

ATTEST:


Executive Director

(SEAL)